

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JOE DELGADILLO,	:	
Plaintiff	:	CIVIL ACTION NO. 3:16-0041
v.	:	(MANNION, D.J.) (MEHALCHICK, M.J.)
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS, et al.,	:	
Defendants	:	

M E M O R A N D U M

Pending before the court is the report of Judge Karoline Mehalchick, (Doc. [23](#)), which recommends that the DOC defendants' motion to dismiss be granted in part and denied in part (Doc. [14](#)); and that defendant PA Flatt's motion to dismiss be granted. (Doc. [18](#)). Judge Mehalchick also recommends that the plaintiff be allowed to proceed as to his Eighth Amendment deliberate indifference claims against John Doe COs Nos. 2-10. No objections have been filed to Judge Mehalchick's report.

The plaintiff filed his complaint on December 11, 2015 in the Eastern District of Pennsylvania, in which he alleges various federal claims pursuant to 42 U.S.C. §1983, as well as a state law claim. After service of the complaint, on January 11, 2016, the matter was transferred to this court. On March 7, 2016, the DOC, SCI-Camp Hill, Superintendent Harry, Bocci, and

John Doe COs 2-10, (the “DOC defendants”), filed a joint motion to dismiss the plaintiff’s complaint, (Doc. 14), along with a brief in support thereof, (Doc. 15). Defendant Flatt filed a separate motion to dismiss the plaintiff’s complaint on April 13, 2016, (Doc. 18), followed by a supporting brief on April 14, 2016, (Doc. 19).

By way of the pending report filed on February 6, 2017, Judge Mehalchick considered the defendants’ motions to dismiss. Having reviewed the claims raised in the plaintiff’s complaint, as well as the defendants’ arguments for dismissal of those claims, Judge Mehalchick recommends that the DOC defendants’ motion to dismiss be granted in part and denied in part and that defendant PA Flatt’s motion to dismiss be granted. It is specifically recommended that the plaintiff’s excessive force claim against Sergeant Bocci, the *Monell* claim and the state law claim brought directly under the Pennsylvania Constitution each be dismissed with prejudice for failure to state a claim; and that the plaintiff’s Eighth Amendment deliberate indifference claims against PA Flatt, Sergeant Bocci, Superintendent Harry, and John Doe CO No. 1 each be dismissed without prejudice for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6). Judge Mehalchick also recommends that the plaintiff be given thirty (30) days in which to file an amended complaint and re-assert his remaining deliberate indifference claims.

While Judge Mehalchick's report was pending, on March 3, 2017, the plaintiff, through counsel, filed an amended complaint against the John Doe Cos 2-10, only. (Doc. 24). In light of this memorandum, the court will accept for filing the plaintiff's amended complaint.

No objections have been filed to the report and recommendation. As such, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." [Fed. R. Civ. P. 72\(b\)](#), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 \(M.D.Pa. 2010\)](#) (*citing* [Henderson v. Carlson, 812 F.2d 874, 878 \(3d Cir. 1987\)](#) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); Local Rule 72.31.

The court has reviewed the reasons presented by Judge Mehalchick for the recommendations made in her report. Because the court agrees with the sound reasoning that led Judge Mehalchick to the conclusions in her report and finds no clear error on the face of the record, the court will adopt the report in its entirety. Further, the court will accept for filing the plaintiff's

amended complaint and remand the matter to Judge Mehalchick for further proceedings. An appropriate order shall issue.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: March 22, 2017

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